



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **201221022**
Release Date: 5/25/2012
Date: March 1, 2012
Uniform Issue List Number:
501.03-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:
Form

Tax Years:

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in § 501(c)(3) of the Internal Revenue Code (the "Code"). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law, and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code § 501(c)(3) of the Code, donors may not deduct contributions to you under § 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under § 6110 of the Code, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: November 5, 2011

Uniform Issue List Number:
501.03-00

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

You(r)/Applicant:

State 1:

State 2:

Church 1:

Church 2:

President:

Vice President:

Trustee 1:

Trustee 2:

Trustee 3:

Date 1:

Date 2:

Letter 1:

Letter 2:

Governing Body:

Dear

We have considered your application for recognition of exemption from Federal income tax under § 501(a) of the Internal Revenue Code (the "Code") as an organization described in § 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

FACTS

You were formed as a nonprofit corporation under the laws of State 1 on Date 1. You filed Form 1023 (Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code) on Date 2.

Your Articles of Incorporation (the "Articles") state that you are formed for the following purposes: "(a) To operate a faith based corporation; (b) To teach the Biblical message to the Nations of the Earth, emphasizing the rulership of the Lord Jesus Christ[;] (c) To promote the

publication of literature bearing the bible message[;] (d) To promote the teaching of the Bible truths and culture[; and] (e) To provide a strong basis for doctrinal, ethical[,] and visionary accountability.” Articles at ¶ 7. Your Articles further state that you are “organized and operated exclusively for the charitable purposes within the meaning of Section 501(c)(3) [of the Internal Revenue Code, and that you] . . . shall not be empowered, and [are] prohibited from, engaging in any activity, which is not allowed pursuant to [that section].” Articles at ¶ 7.

Activities

You state that you “travel[] worldwide to inform others about [y]our Lord and Savior. . . . [and] to encourage those in need to strive for a better life.” Form 1023, Part IV. While traveling, you minister to individuals and “teach and educate on the Word of God.” Letter 1, ¶ 4C. Your members have traveled to Ghana, China, and London, and the expenses associated with such travel have been paid for by members or by organizations requesting your presence. Letter 1, ¶ 4A, B.

You state that you offer food bank services and provide scholarships for General Education Development (GED) programs. Form 1023, Part IV. You state that the scholarships help pay for GED courses and a GED test. Form 1023, Part VIII, Schedule H. Information on the scholarship program is posted on the bulletin boards of Church 1 in State 1 and Church 2 in State 2. You provided us with a copy of your informational flyer, which lists a leader of Church 2 as the person to whom scholarship applications should be directed. Letter 1, attachment.

Your director of education and your Governing Body are responsible for selecting scholarship recipients and for setting the terms of the awards. Letter 1, ¶ 11; Form 1023, Schedule H, section I, part 6. You state that there is not an application process, and that the only criteria for receiving funds is that the recipient must “desire to complete the GED program,” attend class regularly, and agree to have grades and progress reports sent to you. Form 1023, Part VIII, Schedule H, items 3,4a. Relatives of your organization’s scholarship selection committee are eligible to receive scholarship awards, insofar as they meet the attendance and progress requirements that apply to all award recipients. Form 1023, Schedule H, section I, part 7.

You state that the amount of each scholarship will vary depending on the time it takes the recipient to complete the GED coursework. Letter 1, ¶ 10. You state that you have not incurred any expenses related to this program, but that you will pay the GED programs directly on a monthly basis and will do so in the recipient’s name. Letter 1, ¶¶ 7D, 10. Records will be maintained that include the names of recipients and the amounts and purposes of each award. Letter 1, ¶ 10.

Governance

Your Governing Body consists of five uncompensated individuals who are selected by a vote of your current members. Form 1023, Part II, item 5, Part V, item 1a, and Schedule A, item 3; Letter 1, ¶ 7B. These include: President; Vice President; Trustee 1; Trustee 2; Trustee 3; and pastors of individual churches. Id. President is married to, and lives with, Vice President; and Trustee 2 is married to, and lives with, Trustee 3.

Your Articles expressly prohibit private benefit to your members and contains a dissolution clause. You state that you have not formally adopted bylaws or a conflict of interest policy. Form 1023, Part II, item 5; Letter 1, ¶¶ 3, 5. You state that your “integrity will keep [you] from having conflict of interest problems.” Form 1023, Part V, items 5b,c (attachment). You state that although you do not currently pay any wages or salaries, you anticipate that you will do so in the future. Letter 1, ¶ 7. However, other than stating it will be subject to a vote by the Governing Body, you did not describe the method or criteria you will use to determine compensation.

Church and Congregation

You claim to be a “church” within the meaning of § 170(b)(1)(A)(i) of the Code. Form 1023, Part X, item 5a.

You state that you are a ministry that operates within the Church organization. Letter 1, ¶ 7A. You state that your headquarters is Church 1, and that Church 2 is “birth[ed] from that ministry.” Letter 2, ¶ 3. You do not own nor do you pay rent to use the facilities at either church. Form 1023, Schedule A, item 5b.

You have 25 members, all of whom believe in Jesus Christ. Letter 1, ¶ 8C, E. Your members generally do not attend weekly services in the same location due to the distance certain members would have to travel. Letter 1, ¶ 8E. However, all members come together for several days for services at least three times a year. Letter 1, ¶ 8E.

You state that the majority of your worship services are held “in conjunction with” the services of Church 1 and Church 2 –in that they are held in the same place, on the same day, and at the same time. Letter 2, ¶¶ 2, 4. The same is true regarding your bible study and Sunday school programs. Letter 2, ¶ 4.

You state that anyone can become a member of your organization by informing you that they would like to join. Form 1023, Schedule A, item 8. You state that the person must go before your congregation to pledge faithfulness “to God and the church,” and that they then are “given the right hand of fellowship for all the current members.” Id. Members are free to associate with another denomination or church. Letter 2, ¶¶ 5-6.

While your members are not required to attend services at any particular church, you state that six of your 25 total members attend Church 1, and five of the 25 attend Church 2. Form 1023, Schedule A, item 7; Letter 2, ¶ 6. Four persons who hold leadership positions in Church 1 are members of your organization, including President and Vice President. Letter 2, ¶ 5. Three persons who hold leadership positions in Church 2 are members of your organization, including Trustee 2 and Trustee 3. Letter 2, ¶ 5. You state that your remaining members visit Church 1 or Church 2 on occasion but have chosen not to be completely active in either church, attend other churches, or fellowship otherwise as they feel comfortable. Letter 2, ¶ 6.

In your application, you indicate that you are not part of a group of churches with similar beliefs and structures, and that you have a written creed, statement of faith, or summary of beliefs, which includes the belief that “[t]he entire Bible is the infallible word of God and is truth” and that “Jesus Christ was and is the Son of God.” Form 1023, Schedule A, items 1, 14; Letter 1, ¶ 8. You also state that you have a form of worship, in which you “Pray, Sing, and Read The Word of

God" as well as a formal code of doctrine and discipline, which is the "belie[f] in the birth, life and death of Jesus Christ. . . . [and] that discipline comes from Jesus Christ as described in His Word." Form 1023, Schedule A, item 2; Letter 1, ¶ 8. However, you state that you do not have a distinct religious history or literature of your own, nor do you have bulletins or other such materials that you provide to attendees at your services. Id.

Your application states that you have schools for the preparation of your ordained ministers or religious leaders, and that you ordain, commission, or license such individuals, though you have provided no proof to support either claim. Form 1023, Schedule A, items 10, 11, 13. You also state that you conduct baptisms, weddings, and funerals, and that you have a school for the religious instruction of the young. Form 1023, Schedule A, items 9-10. You do not issue church charters. Id. item 15; Letter 1, ¶ 8.

LAW

Section 501(a) of the Code exempts from federal income taxation organizations described in § 501(c).

Section 501(c)(3) of the Code describes organizations organized and operated exclusively for charitable, religious, and other specified exempt purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations (the "Regulations") states that in order to be exempt as an organization described in § 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in that section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i) of the Regulations states that an organization is "organized exclusively" for one or more exempt purposes only if its articles of organization limit the purposes of the organization to one or more exempt purposes and do not expressly empower the organization to engage, other than as an insubstantial part of its activities, in activities which are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(1)(iii) of the Regulations states that an organization is not organized exclusively for one or more exempt purposes if its articles of organization expressly empower it to carry on, as more than an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes. Section 1.501(c)(3)-1(b)(1)(iv) further provides that in no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in § 501(c)(3).

Section 1.501(c)(3)-1(b)(1)(v) of the Regulations states that an organization must, in order to establish its exemption, submit a detailed statement of its proposed activities with and as a part of its application for exemption.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities

that accomplish one or more of such exempt purposes specified in § 501(c)(3) of the Code. An organization will not be regarded as exempt if more than an insubstantial part of its activities further a non-exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the Regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals, who are defined in § 1.501(a)-1(c) as persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. Thus, an organization must establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Rev. Rul. 56-304, 1956-2 C.B. 306, held that an organization meeting the requirements for exemption is not precluded from distributing its funds to individuals, as long as any such distribution is made on a truly charitable basis and in furtherance of the purposes for which it is organized. However, such organizations should maintain adequate records and case histories such that all distributions can be substantiated upon request by the Internal Revenue Service (the "Service"). Adequate recordation ordinarily would include: (1) the names and addresses of each recipient of aid; (2) the amount distributed to each recipient; (3) the purpose for which the aid was given; (4) the manner in which the recipient was selected; and (5) the relationship, if any, between the recipient and (a) members, officers, or trustees of the organization, (b) a grantor or substantial contributor to the organization or a member of the family of either, and (c) a corporation controlled by a grantor or substantial contributor.

In Bubbling Well Church of Universal Love, Inc. v. Commissioner, 74 T.C. 531, 534 (1980), aff'd, 670 F.2d 104 (9th Cir. 1981), the Tax Court denied exemption to a small family church. The court found that the close family relationship of the organization's only three board members, who also controlled 100% of the entity's voting rights, put them in a position to "without challenge, [] dictate [the organization's] program[s] and operation[s], prepare its budget, and spend its funds, and [that they] could continue to do so indefinitely." The court acknowledged that the presence of a small, closely-related board alone was not enough to deny tax exemption. However, when combined with the organization's vague and uninformative responses to questions about expenditures, membership, and activities, denial was appropriate, because the organization failed to meet its burden of showing the absence of private benefit to its individual members.

In National Association of American Churches v. Commissioner, 82 T.C. 18 (1984), the Tax Court held that the combination of unfavorable facts and circumstances and the applicant's failure to provide "full and complete information from which [the Service could] make a well-informed determination" was sufficient to deny exemption. The court emphasized the need for open and candid disclosure, "particularly where a family church is involved."

In Church by Mail, Inc. v. Commissioner, T.C. Memo 1984-349 (T.C. 1984), aff'd, 765 F.2d 1387 (9th Cir. 1985), an organization sought § 501(c)(3) exemption and claimed it was a church where its main activity was mailing literature that focused on the ministry of one its reverends.

That reverend served as an officer of the church along with another reverend. In addition, the two reverends were the sole shareholders of an ad agency through which the church mailings were obtained. The two reverends received commissions on each order placed through the agency. The two reverends also were the sole shareholders of a computer services business, which, through the ad agency, provided services to the church. The ad agency marked up the cost of the computer services and then billed the church at the increased rate. Finally, the two reverends operated another ministry that was very similar to but nevertheless distinct from the applicant-church. The church, the ministry, and the ad agency all shared office space, and the two reverends carried out effectively all responsibilities associated with the various entities. Furthermore, several family members of the reverends received payments from these entities. The church received over \$ in "contributions" in one tax year, but after taking deductions for its mailings and other expenses, it reported a net loss. The Tax Court held that the business relationships between the church and the outside entities facilitated the flow of private financial benefits to the two reverends, their outside entities, and their families. The court gave particular attention to the substance of the relationships between the various entities and individuals, and focused on the potential for the enablement of "current as well as potential abuse through manipulation of the arrangements between those entities."

Section 170(b)(1)(A)(i) of the Code describes a church or convention or association of churches.

In American Guidance Foundation, Inc. v. Commissioner, 490 F. Supp. 304 (D.D.C. 1980), the court held that a religious organization exempt under § 501(c)(3) of the Code was not a church described in § 170(b)(1)(A)(i). The court discussed the "14 criteria" developed by the Service to aid in the evaluation of applications for church foundation status. Those criteria are: (1) a distinct legal existence; (2) a recognized creed and form of worship; (3) a definite and distinct ecclesiastical government; (4) a formal code of doctrine and discipline; (5) a distinct religious history; (6) a membership not associated with any other church or denomination; (7) an organization of ordained ministers; (8) ordained ministers selected after completing prescribed courses of study; (9) literature of its own; (10) established places of worship; (11) regular congregations; (12) regular religious services; (13) Sunday schools for the religious instruction of the young; and (14) schools for the preparation of its ministers.

The court stated that "[a]t a minimum, a church includes a body of believers or communicants that assembles regularly in order to worship" and reasoned that certain criteria are of central importance in distinguishing a "church" from other forms of religious organizations –namely the existence of an established congregation served by an organized ministry, the provision of regular religious services and religious education for the young, and the dissemination of a doctrinal code. With respect to the existence of a regular congregation, the court held that a congregation consisting of the organization's organizer and his immediate family members did not constitute a "congregation" within the ordinary meaning of the word.

In Church of Eternal Life and Liberty, Inc. v. Commissioner, 86 T.C. 916 (1986), the Tax Court defined a "church" for purposes of § 170(b)(1)(A)(i) as "a coherent group of individuals and families that join together to accomplish the religious purposes of mutually held beliefs." The court further stated that "a church's principal means of accomplishing its religious purposes must be to assemble regularly a group of individuals related by common worship and faith."

In Foundation for Human Understanding v. Commissioner, 88 T.C. 1341 (1987) [hereinafter

Foundation I], the Tax Court held that an organization that operated a radio ministry and established local congregations was a church, because it met most of the Service's 14 criteria. However, the court did not adopt the 14 criteria as a definitive test, explaining them instead as a part of the Service's broader consideration of all facts and circumstances when determining "church" status. The court also declared that "[w]hen bringing people together for worship is only an incidental part of the activities of a religious organization, those limited activities are insufficient to label the entire organization a church."

In Spiritual Outreach Society v. Commissioner, 927 F.2d 335 (8th Cir. 1991), the Eighth Circuit upheld a Tax Court decision denying church status to an organization because it failed to meet the factual requirements of being a church under § 501(c)(3) of the Code. The court cited the 14 criteria, and gave particular emphasis to the facts that the organization did not regularly provide religious services or religious education for the young and did not disseminate a doctrinal code. Moreover, the court found that the organization lacked an established congregation, because "nothing indicates that the participants considered [the organization] to be their church."

In Foundation of Human Understanding v. United States, 614 F.3d 1383 (Fed. Cir. 2010) [hereinafter Foundation II], cert. denied, 131 S. Ct. 1676 (Mar. 21, 2011), the Court of Appeals for the Federal Circuit affirmed a decision by the Court of Federal Claims denying an organization church status under § 170. The court rejected the organization's argument that "a religious organization should be treated as a church under § 170 as long as 'there is a body of followers beyond the scope of a "family church" . . . [who] seek the teachings of the organization and express or acknowledge an affiliation with its religious tenets.'" The court held that "more than mere affiliation by a number of people with an organization espousing a particular belief system" is necessary to qualify as a church within the meaning of § 170 of the Code. Instead, "a religious organization must create, as part of its religious activities, the opportunity for members to develop a fellowship by worshipping together."

In Bubbling Well, *supra*, the court stated that the applicant-organization carries the burden of showing that it qualifies for exemption under § 501(c)(3) of the Code, and that even for an organization claiming exemption as a religious organization, "exemption is a privilege, a matter of grace rather than right." Meeting the burden requires an "open and candid disclosure of all facts bearing upon [the applicant's] organization, operations, and finances . . . [and if] such disclosure is not made, the logical inference is that the facts, if disclosed, would show that [the applicant] fails to meet the requirements [for exemption]."

ANALYSIS

Qualification as an Organization Described in § 501(c)(3) of the Code

To qualify for exemption as an organization described in § 501(c)(3) of the Code, you must be both organized and operated exclusively for one or more of the purposes specified in that section. See § 1.501(c)(3)-1(a) of the Regulations.

An organization is "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of the exempt purposes specified in § 501(c)(3) of the Code, and if not more than an insubstantial part of its activities furthers a non-

exempt purpose. See § 1.501(c)(3)-1(c)(1) of the Regulations; see also Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279, 283 (1945) (construing a similar provision of the Social Security Act such that “[t]he presence of a single [non-exempt] purpose . . . [that is] substantial in nature[] will destroy the exemption”). An organization will not be regarded as operated exclusively for exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. See § 1.501(c)(3)-1(c)(2) of the Regulations.

Although you state that you offer food bank services, you did not provide any information about nor have you established your present involvement in providing such services.

You provided information about your GED scholarship program in your application and in your subsequent submissions in Letter 1 and Letter 2. However, your explanation of the award process raises significant concerns. You have no application process, and the only criteria for receiving funds is that the recipient must “desire to complete the GED program,” attend class regularly, and agree to have grades and progress reports sent to you. There is no procedure in place to determine the amount of scholarship awards, and your responses indicate that recipients will be funded indefinitely until they complete the program. Finally, relatives of your scholarship selection committee are eligible to receive funds, but without formally adopted bylaws or a written conflict of interest policy, there is nothing to prevent the inurement of your net earnings to persons having a personal and private interest in your activities within the meaning of § 1.501(c)(3)-1(c)(2) of the Regulations. With all of this said, the information you provided suggests that you have not to this point awarded any scholarship funds. Even if you have, you did not submit the type of information contemplated in Rev. Rul. 56-304, *supra*, and based on the above facts, you could not provide such information in any event.

You state that you travel around the world to inform others about your beliefs and to encourage those in need to strive for a better life. However, you did not provide any details about your members’ travels beyond listing the names of countries they have visited. Thus, you have not established how worldwide travel is related to or furthers your exempt purpose. And even if you did, the absence of bylaws and a conflict of interest policy is once more problematic, because you lack the basic procedural safeguards necessary to prevent impermissible private benefits from flowing to your members.

You further represent that you plan to compensate your Governing Body once you have sufficient resources to do so. However, you have not established criteria to determine how compensation will be determined and to ensure that compensation is no more than the fair market value based on the qualification of the individuals being compensated, the duties assigned them, and the hours they devote to those duties. The information you provided suggests that compensation will be determined by the individuals being compensated and/or other persons that compose your closely-related Governing Body. This arrangement results in a conflict of interest, and like other aspects of your operations discussed to this point, leaves open the possibility of private inurement proscribed by § 1.501(c)(3)-1(c)(2) of the Regulations.

Given its closely-related nature, your Governing Body, like the one in Bubbling Well, *supra*, could be positioned to “without challenge, [] dictate [your organization’s] program[s] and operation[s], prepare its budget, and spend its funds, and [they] could continue to do so indefinitely.” Moreover, your claims that your “integrity will prevent conflict of interest problems” and that you will “take it under advisement to adopt bylaws,” along with the incomplete

information you provided about your worldwide travel, the operation of your scholarship program, and your relationship with Church 1 and Church 2 do not amount to the level of open and candid disclosure the court discussed in American Churches, supra. Thus, you have not met the burden of establishing that your net earnings will not inure in whole or in part to the benefit of private shareholders or individuals as set forth in § 1.501(c)(3)-1(c)(2) of the Regulations, and that your activities will not serve to benefit private interests as set forth in § 1.501(c)(3)-1(d)(1)(ii).

The potential for private benefit clouds every aspect of your organization's operations. This issue was identified early in the process of developing your case, and you had ample time and opportunity to address it. Your failure to concretely address these concerns is especially troubling given that you expressly leave open the possibility of future remuneration of the Governing Body. And even if no benefit has flowed to individual members up to this point, the pervasive but ambiguous relationship between your organization and Church 1 and Church 2, coupled with the lack of procedural safeguards detailed above and the fact that President and Vice President are leaders of Church 1 and Trustee 2 and Trustee 3 are leaders of Church 2, could readily facilitate the types of future abuses that the court identified in Church by Mail, supra.

You do not meet the operational test of § 1.501(c)(3)-1(c) of the Regulations, because you have not established that your organization is operated exclusively for one or more exempt purposes; you have not established either that your net earnings will not inure in whole or in part to the benefit of private shareholders or individuals as set forth in § 1.501(c)(3)-1(c)(2) or that your activities will not serve to benefit private interests as set forth in § 1.501(c)(3)-1(d)(1)(ii). Therefore, you are not exempt as an organization described in § 501(c)(3) of the Code.

Qualification as a "Church" Under § 170(b)(1)(A)(i) of the Code

Even when it is determined that an organization is organized and operated for religious purposes within the meaning of § 501(c)(3) of the Code, it is not necessarily a "church" within the meaning of § 170(b)(1)(A)(i). The associational test and the 14 criteria guide this determination.

Associational Test

In American Guidance, supra, the court stated that "[a]t a minimum, a church includes a body of believers or communicants that assembles regularly in order to worship." This associational role, the court reasoned, is what "separates a 'church' from other forms of religious enterprise." See also Church of Eternal Life, Foundation II, supra. Thus, if an organization does not serve this associational role, it fails to achieve the minimum characteristics of a "church," and instead must be viewed simply as a "religious organization" subject to the filing requirements of § 6033 of the Code.

You do not regularly bring members of your organization together in one place to worship a common faith. Instead, your case resembles the organization in Foundation II, supra. There, the court held that sporadic meetings conducted in a variety of locations "[did] not constitute a regular assembly of a cohesive group of people for worship . . . [and did not] enable[] congregants to establish a community of worship." Likewise, you hold several meetings

annually in a location mutually convenient for all of your members, but the more regularly occurring worship takes place at Church 1, Church 2, or wherever else your members decide to practice their faith. Also like Foundation II, you did not provide any information about the members in attendance at your semi-annual meetings, nor did you otherwise establish the existence of a regular congregation.

Your organization does not create for your members an opportunity to develop a fellowship by worshipping together. Like the organization described in Foundation II, as well as those described in Universal Life Church, American Guidance, and Spiritual Outreach, supra, you lack regularly held worship services and a regular place of worship. At best, bringing people together for worship is only an incidental part of your activities. See Foundation I, supra. Accordingly, you do not satisfy the associational test, and you thus are not a "church" as described under § 170(b)(1)(A)(i) of the Code.

14 Criteria

If an organization satisfies the associational test, the analysis then moves to the total facts and circumstances embodied within the 14 criteria. See American Guidance, Foundation I, and Spiritual Outreach, supra. Although an organization need not satisfy each of the 14 criteria, the absence of factors such as a formal code of doctrine and discipline, or a membership that is not associated with any other church or denomination reduces the likelihood that an organization will be classified as a "church" within the meaning of § 170(b)(1)(A)(i). See Spiritual Outreach, supra.

1. Distinct Legal Existence.

You have a distinct and independent legal existence under the laws of State 1.

2. Recognized Creed and Form of Worship.

In your application, you indicate that you have a written creed, statement of faith, or summary of beliefs, which includes the belief that "[t]he entire Bible is the infallible word of God and is truth" and that "Jesus Christ was and is the Son of God." You also state that you have a form of worship, in which you "Pray, Sing, and Read The Word of God."

3. Definite and Distinct Ecclesiastical Government.

Your Governing Body is a definite and distinct ecclesiastical government. However, it is composed almost entirely of persons who also are involved with and hold leadership positions on the governing bodies of Church 1 and Church 2.

4. Formal Code of Doctrine and Discipline.

You state that you have a formal code of doctrine and discipline, which is the "belie[f] in the birth, life and death of Jesus Christ. . . . [and] that discipline comes from Jesus Christ as described in His Word."

5. Distinct Religious History.

You state in your application that you do not have a distinct religious history.

6. Membership Not Associated With Any Other Church or Denomination.

In your application, you indicate that you are not part of a group of churches with similar beliefs and structures. However, you state that you are a ministry that operates within the Church organization, that your headquarters is Church 1, and that Church 2 is “birth[ed] from that ministry.” In addition, the majority of your services are held in conjunction with Church 1 and Church 2, and you state that six of your twenty-five total members attend Church 1, and five of the twenty-five attend Church 2. Moreover, four persons who hold leadership positions in Church 1 are members of your organization, including President and Vice President, and three persons who hold leadership positions in Church 2 are members of your organization, including Trustee 2 and Trustee 3. You also state that members attend other churches and fellowship otherwise as they feel comfortable.

In Church of Eternal Life, supra, the court emphasized the importance of “common worship and faith” in addition to the associational aspect of a “church.” On the contrary, your members are free to “attend any church that they [choose] to attend and still be a member of [your organization].” Just as important, four of the five persons on your Governing Body are active in Church 1 or Church 2, and overall there appears to be a significant overlap in the activities, operations, and governance of your organization, Church 1, and Church 2.

The information you provided clearly indicates that you are associated with other churches. Moreover, you expressly state that members are free to associate with other denominations or churches. Accordingly, you do not have a membership that is not associated with any other church or denomination.

7-8. Organization of Ordained Ministers; Ordained Ministers Selected After Completing Prescribed Courses of Study.

Your application states that President is a Minister of the Gospel. Although you state that President was ordained and is licensed in State 1, you did not provide any information on the proscribed course of study that President completed prior to ordination and licensure.

You also state that you have schools for the preparation of your ordained ministers or religious leaders, and that you ordain, commission, or license such individuals. However, the information you provided regarding your requirements for ordination, commission, or licensure were vague, and did not include any type of detail regarding the actual steps applicants would need to take or the benchmark criteria they would need to satisfy to be ordained, commissioned, or licensed. Nor could the information you provided be viewed as a summary of a “proscribed course of study.” Finally, there is nothing to indicate a wider network or organization of ministers similar to President.

Therefore, you did not provide information sufficient to establish an organization of ordained ministers, or to establish that ordained ministers are selected after completing prescribed courses of study.

9. Literature of Its Own.

You state in your application that you do not have literature of your own. You also state that you do not have bulletins or other such materials that you provide to members or attendees at your services.

10. Established Place of Worship.

You state that the majority of your worship services are held "in conjunction with" the services of Church 1 and Church 2. In other words, your services take place at the same location, on the same day, and at the same time as the services of Church 1 and Church 2. Furthermore, your members are not required to attend services at either Church 1 or Church 2, and instead are free to worship as they see fit.

Church 1 and Church 2 are most accurately viewed as the established places of worship for those respective churches. Therefore, you do not have an established place of worship.

11. Regular Congregations.

In Spiritual Outreach, supra, the court held that the organization did not have an established congregation because "nothing indicates that the participants consider[it] to be their church." There is nothing to indicate that your members consider you to be their church. You do not require members to renounce other religious beliefs or membership in other churches, and your application and subsequent correspondences indicate that members can bring their own religion to your organization. Furthermore, your members do not come together to meet in a common place on a regular basis.

Accordingly, and in addition to the analysis presented above regarding the "associational test," you do not have a congregation.

12. Regular Religious Services.

You state that you hold services in conjunction with Church 1 and Church 2, and that members also can attend services wherever they choose. Based on the information you provided, it appears that the only time your services are held independent of Church 1 or Church 2 are during your semi-annual gatherings. The presence of your members during Church 1's or Church 2's regular religious services does not likewise make them your organization's religious services. Thus, under the circumstances you do not have regular religious services.

13. Sunday Schools for the Religious Instruction of the Young.

Based on the information you provided, it appears that your bible study and Sunday school programs are held in conjunction with Church 1 and Church 2. At best, it appears that you provide those services to supplement the religious activities of Church 1 and Church 2. There is nothing to establish that any religious curriculum taught by way of these services reflects your practices or beliefs. See Foundation of Human Understanding v. U.S., 88 Fed. Cl. 203, 226-27 (2009) (explaining that the applicant bears the burden of establishing the existence of religious

instruction of the young, and establishing that such instruction reflects the applicant's religious practices or beliefs). Accordingly, you have not established that you have Sunday schools for the religious instruction of the young.

14. Schools for the Preparation of Its Ministers.

You state that you have schools for the preparation of your ministers. However, you failed to provide any information describing or establishing the existence of such schools.

Thus, even if you satisfied the associational test, you still would not qualify as a "church" described in § 170(b)(1)(A)(i), because you do not meet a majority of the 14 criteria used by the Service to determine church status.

CONCLUSION

In light of the foregoing, we have concluded that you do not qualify for exemption from Federal income tax under § 501(a) of the Code as an organization described in § 501(c)(3). Moreover, even if you qualified for tax exemption under § 501(c)(3), you would nevertheless fail to qualify for status as a "church" under § 170(b)(1)(A)(i), because the balance of determinative facts and circumstances weigh heavily against such a classification.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for

the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the Internal Revenue Service.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service
TE/GE ()

1111 Constitution Ave, N.W.
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations